

## R E M A R K S

The Examiner has rejected claims 1 and 26 as anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 6,305,567 to Sulpizio, rejected claims 1-5, 7, 8, 11 and 26 as rendered obvious under 35 U.S.C. § 103(a) over U.S. Patent No. 2,485,028 to Bauernfreund in view of U.S. Patent No. 6,224,261 to Stone, rejected claim 6 as rendered obvious under 35 U.S.C. § 103(a) over Bauernfreund in view of Stone in further view of U.S. Patent No. 6,588,620 to Thuma, rejected claim 9 as rendered obvious under 35 U.S.C. § 103(a) over Bauernfreund in view of Stone in further view of U.S. Patent No. 5,638,979 to Shea, and rejected claims 10, 12 and 14 as obvious under 35 U.S.C. § 103(a) over Bauernfreund in view of Stone in further view of U.S. Patent No. 5,964,533 to Ziglar.

While the Examiner lists claims 13 and 15-25 as rejected on the cover page, the Examiner has provided no indication of the references over which the Examiner would reject those claims. Therefore, Applicant understand the cover page to be in error and claims 13 and 15-25 to be allowed or allowable.

### **I. Rejection Over Sulpizio**

The Examiner has rejected claims 1 and 26 as anticipated by Sulpizio. The Examiner directs Applicant's attention to Fig. 7 where Sulpizio discloses a bag attached to a rectangular frame. It can be seen in Fig. 7 that the bag is attached to the top end of the frame of Sulpizio. Another embodiment of Sulpizio does not show a bag or material attached to a frame at all.

Claims 1 and 26 of the present application require "a flexible material attached over the bottom end of the rectangular box." Because Sulpizio does not disclose or suggest a flexible material attached to the bottom of a rectangular box, as required by claims 1 and 26, Sulpizio does not anticipate or render obvious claims 1 or 26.

## II. Rejections Over Bauernfreund in View of Stone in View of Other References

The Examiner has rejected claim 1 as obvious over Bauernfreund in view of Stone.

Claim 1 requires a stiffness panel that is maintained in the plane substantially parallel to the plane of the bottom end of the rectangular box by a flexible material.

Bauernfreund discloses a box that includes a ledge 28 for maintaining a base plate 10 in position within the box. The ledge 28 leaves a substantial portion of the bottom of the box uncovered, which would allow items that wedge between the box and the ledge to escape the box. Regardless, Bauernfreund discloses the ledge as the means of support for the base plate.

Stone discloses a composite container for liquids that uses a “bottom wall.” The bottom wall is attached to the side walls and forms the bottom of the container. Stone does not disclose a stiffness panel. The Examiner has recognized Bauernfreund does not disclose a flexible material attached to the bottom of the bin and states that one of ordinary skill in the art would substitute the bottom wall of Stone.

“When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness.” *In re Lee*, 277 F.3d 1338, 1343 (Fed.Cir. 2002). “The factual inquiry whether to combine references must be thorough and searching. It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with.” *Id.* The need for specificity pervades this authority. *Id.* See also *In re Kotzab*, 217 F.3d 1365, 1371 (Fed.Cir. 2000)(“particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed”).

Applicant submits that Bauernfreund and Stone are not properly combinable references for the purpose the Examiner seeks to combine them. One would not look to Stone to find a solution to hold a stiffness panel in place. This is because Stone does not even include a stiffness panel. Why would one look to Stone to provide a solution to a problem that Stone in fact does not solve? The Examiner would need to provide some motivation for substituting the ledge of Bauernfreund with the bottom wall of Stone. However, there can be no motivation because the bottom wall of Stone does not serve the purpose the Examiner ascribes to it in her combination of references. Therefore, the Examiner reconstruction can only be based upon a hindsight determination, which is an improper analysis.

Claims 1-11 depend from claim 1. While the Examiner does cite additional prior art against these claims, the Examiner does not assert that the additional art discloses the missing limitation not provided by the combination of Bauernfreund and Stone. As such, claims 1-12 are allowable over the prior art of record for at least the same reasons as claim 1.

Claims 12 and 26 contain the same limitation, discussed above, as that not found in the combination of Bauernfreund and Stone. As such, claims 12 and 26 are not rendered obvious by Bauernfreund and Stone for the same reasons as claim 1.

Claim 14 depends from claim 12. As such, claim 14 is allowable over the prior art of record for at least the same reasons as claim 12.

Based on the foregoing, the allowance of claims 1-26 is respectfully requested. If for any reason the Examiner is unable to allow the application on the next Office Action, the Examiner is requested to contact the undersigned attorney for the purpose of arranging an interview.

Respectfully submitted,



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